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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Request for Amendment of)
Sections 2.803-2.806 of the)
Commission's Rules Relating)
to the Marketing of Radio)
Frequency Devices)

RM-8125

**COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS
IN RESPONSE TO ELECTRONIC INDUSTRIES ASSOCIATION/
CONSUMER ELECTRONICS GROUP'S PETITION FOR RULE MAKING**

I. INTRODUCTION

The National Association of Broadcasters ("NAB") herewith offers its comments in response to the Petition for Rule Making filed by Electronics Industries Association/Consumer Electronics Group ("EIA/CEG").¹ The petition requests amendment of Sections 2.803-2.806 of the Commission's Rules relating to the marketing of radio frequency devices.

It is the opinion of NAB that the amended rules, as proposed by EIA/CEG, are too general and, as written, could lead to radio frequency interference problems. However, NAB agrees with EIA/CEG that the present rules relating to marketing of radio frequency devices are confusing and in need of amendment.

¹On November 24, 1992, the Commission placed the above-referenced petition on public notice. See "Associate Managing Director Public Information and Reference Services: Petitions for Rule Making Filed," FCC Public Notice, Report No. 1919.

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We concur with petitioner's assessment that these rules should be simplified and clarified for the benefit of manufacturers desiring to demonstrate and define markets for new devices.

The EIA/CEG proposed rule revision² would increase the ability of manufacturers to demonstrate radio frequency devices totally without concern for interference that may be produced to FCC-authorized radio services. Such a result, NAB believes, should not be allowed to occur. Moreover, NAB believes that the notice of non-compliance with the FCC rules, as set forth in the EIA/CEG petition and appendix, would not sufficiently, or clearly, explain the status of the radio frequency device.

For these reasons, should the FCC begin a rule making proceeding on these matters, NAB urges the Commission to consider proposing the rule revisions we include herewith as Appendix A.

II. MANUFACTURERS MUST MAKE A GOOD FAITH EFFORT TO COMPLY WITH THE COMMISSION'S RULES RELATING TO RADIO FREQUENCY INTERFERENCE.

NAB strongly believes that, prior to the demonstration of radio frequency devices at trade shows or at potential customer's sites, manufacturers must subject their devices to some minimal preliminary interference testing. Such testing will yield benefits to the manufacturer by providing useful information regarding the device's interference potential.

²The EIA/CEG petition includes, at Appendix A, petitioner's proposed, revised rule. These rule revisions also are discussed throughout the EIA/CEG petition. Appended to NAB's filing today is a recommended substitute for the rule amendments proposed by EIA/CEG.

Moreover, such preliminary testing will provide the Commission with certainty that the manufacturer will comply in good faith with the Commission's rules pertaining to harmful interference. NAB does not believe that it should be necessary for manufacturers, in these preliminary stages of product development, to make rigorous RFI measurements. However, manufacturers should certify that preliminary testing has been performed and that the subject device, before marketing and sales, will undergo full compliance testing in accordance with the Commission's Rules as recommended below.

A certification of preliminary testing should accompany the demonstration device.

**III. NON-COMPLIANT RADIO FREQUENCY DEVICES INTENDED FOR
DEMONSTRATION MUST BE PROPERLY LABELED.**

Any device emitting radio frequency energy, not approved by the FCC, that is demonstrated at a trade show or taken to potential customers' sites for the purpose of demonstration or evaluation, should be labeled with an appropriate notice clearly stating that the device does not comply with FCC rules. NAB believes this notice should be placed in a conspicuous location on the device and contain the following wording:

This device has not been approved by the Federal Communications Commission. This device may not be sold or leased until the approval of the FCC has been obtained.

This language is far preferable to the notice wording proposed in the EIA/CEG petition. That EIA/CEG language, set forth in the appendix to the petition, does not specifically rule out the sale of non-approved devices. Petitioner EIA/CEG says its supports the Commission's "primary interest in the minimization of radio frequency interference."³ However, NAB does not believe that interest would be furthered by implementation of the EIA/CEG language. The restriction of sale of non-approved devices is essential in order to prevent interference to licensed radio services. The EIA/CEG proposed revised rule would compromise the non-interference rights of licensed radio services.

IV. CONCLUSION

NAB urges the Commission to condition any changes to the rules addressed in this petition on the codification of the following two requirements:

(1) Manufacturers, desiring to demonstrate radio frequency devices at trade shows or at potential customers' sites, must certify that minimal preliminary tests were performed, in good faith, for the purpose of ascertaining the radio frequency interference potential of the device. This certification must remain with the device until it is FCC approved; and

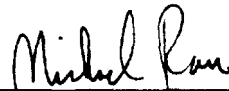
(2) A notice must be affixed in a conspicuous location on the device stating clearly that the device is not to be sold or leased until FCC approval is obtained.

³See EIA/CEG Petition for Rule Making, supra note 1, at 10.

NAB urges Commission adoption of amended rules as set forth in the appendix to these comments.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, N.W.
Washington, DC 20036



Michael C. Rau
Senior Vice President
Science & Technology



John Marino
Manager, Technical Regulatory Affairs
Science & Technology

Barry D. Umansky
Deputy General Counsel

December 24, 1992

APPENDIX

PROPOSED REVISED RULE

NAB proposes the following in lieu of the EIA/CEG proposed wording contained in its petition. NAB additional language is in bold. Deletions are shown by strike-outs.

2.803 Marketing of Radio Frequency Devices Prior to Commission Approval or Compliance with the Rules.

(a) No person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device, unless, prior thereto:

- (1) Such devices subject to type approval, type acceptance, certification, or notification are approved by the Commission in accordance with the rules in this chapter; or
- (2) Such devices subject to verification comply with the applicable administrative and technical provisions specified in this chapter.

(b) Notwithstanding the provisions in subsection (a) of this section, a radio frequency device may be advertised and displayed, but not offered for sale or lease prior to Commission approval or compliance with the Commission's rules, provided that such devices are accompanied by a conspicuous notice worded as follows:

This device has not yet been approved by the Federal Communications Commission. ~~This device must comply with appropriate FCC equipment authorization procedures before final delivery to the buyer or to centers of distribution.~~ **This device may not be sold or leased until the approval of the FCC has been obtained.**

(c) Notwithstanding the provisions of subsection (a) of this section, any radio frequency device may be operated prior to Commission approval or compliance with the Commission's rules under the following conditions:

- (1) Any radio frequency device may be operated for the purpose of demonstration, such as at a trade show or exhibition, provided the device conspicuously displays the notice of subsection (b) of this section and is accompanied by a certification from the manufacturer that the device has undergone preliminary tests for the purpose of ascertaining the radio frequency interference potential of the device;

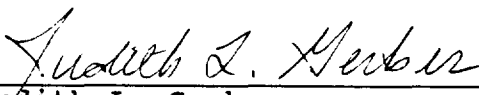
- (2) Any radio frequency device may be operated for the purpose of compliance testing, **provided the device conspicuously displays the notice of subsection (b) of this section and is accompanied by a certification from the manufacturer that the device has undergone preliminary tests for the purpose of ascertaining the radio frequency interference potential of the device;**
 - (3) Any radio frequency device may be operated at the manufacturer's facilities during developmental, design, or preproduction stages for evaluation of product performance and determination of customer acceptability;
 - (4) Where customer acceptability of a radio frequency device cannot be determined at the manufacturer's facilities because of size or unique capability of the device, that device may be operated at the customer's site during developmental, design, or preproduction stages for evaluation of product performance and determination of customer acceptability, **provided the device conspicuously displays the notice of subsection (b) of this section and is accompanied by a certification from the manufacturer that the device has undergone preliminary tests for the purpose of ascertaining the radio frequency interference potential of the device;**
 - (5) For the purpose of paragraphs (c) (3) and (c) (4) of this section, the manufacturer's facilities are considered to include the facilities of the party responsible for compliance with the regulations, the manufacturer, and other entities working under the authorization of the responsible party in connection with the development and manufacture, but not the marketing, of the equipment.
- (d) Parties responsible for verification of radio frequency devices shall have the option of ensuring compliance with the applicable technical specifications of this chapter at each customer's location after installation, provided that the purchase or lease agreement includes a proviso that such a determination of compliance be made and is the responsibility of the party responsible for verification of the equipment.
- (e) Subsections (b) - (d) of this section do not apply to radio frequency devices that could not be granted an equipment authorization or be legally operated under the FCC's current rules.

CERTIFICATE OF SERVICE

I, Judith L. Gerber, do hereby certify that a true and correct copy of the foregoing "Comments of the National Association of Broadcasters in Response to Electronic Industries Association/Consumer Electronics Group's Petition for Rule Making" was sent, via first class mail, on this date, December 24, 1992, to the following:

George A. Hanover
Suzanne M. Heaton
Consumer Electronics Group
Electronic Industries Association
2001 Pennsylvania Avenue, NW
Washington, DC 20006

James L. Casserly, Esq.
Jody D. Newman, Esq.
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, NW
P.O. Box 407
Washington, DC 20044



Judith L. Gerber